

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

CHARLES PRESCOTT, on behalf of
himself and all other similarly situated
persons,

Plaintiff,

v.

MORGREEN SOLAR SOLUTIONS,
LLC; DARRIN GREEN; AND
VAUGHN INDUSTRIES, LLC,

Defendants.

CA No. 5:17-cv-365-FL

**MEMORANDUM IN FURTHER SUPPORT OF DEFENDANTS MOTION TO SET
ASIDE PLAINTIFFS ENTRY OF DEFAULT**

Defendants Darrin Green and Morgreen Solar Solutions, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 55, moves to set aside the Entry of Default ordered on March 16th, 2018 and to accept the Defendants answer to Plaintiffs complaint and Defendant Vaughn's Cross Claims. For the reasons stated below, Defendants Motion should be granted.

1. Darrin Green submitted an Affidavit in response to an Order dated August 27, 2018 in which the order instructed Mr. Green to supply answers to certain questions so that the presiding Judge can determine if good cause can be shown.
2. Darrin Green, through his affidavit, has shown that he acted with diligence in securing counsel as quickly as his recourses would allow and as quickly as he was advised to retain counsel.
3. Plaintiffs complaint was filed on July 21, 2017, which was served on Defendants on August 2, 2017.

4. Defendant Green was unable to secure counsel before Plaintiff's Motion for Entry of Default was filed on March 16, 2018, however was able to do so shortly thereafter.
5. Had Defendant been advised to act promptly rather than do nothing, Defendant would have been able to, at minimum, have counsel act on his behalf prior to the Plaintiff's entry of default being entered.
6. Defendant, after retaining counsel, was able to submit an answer to both Plaintiff's complaint and counter-Defendant's cross claims, as well as a Motion to Set Aside Entry of Default within a reasonably short period of time.
7. Defendant has a meritorious defense, as referenced in his Answer to all claims against him.
8. Defendant was advised to not act by other Firms, which he identifies as "Firm 2" and "Firm 3," and rises to the level of excusable neglect and good cause for said neglect.
9. In *Consolidated Masonry & Fireproof, INC. v. Wagman Const. Co.*, 383 F.2d 249 at 252 (4th Cir., 1967), the defendants were allowed the opportunity for evidentiary hearings although the entry of default was not set aside.
10. In the present case, if the Court finds that Defendant has not shown good cause or excusable neglect, default judgment should not be entered and the matter should be heard on its merits.
11. Further, in *Consolidated Masonry*, the defendant failed to file an answer, and was allowed the opportunity to be heard. Here, Darrin Green and Morgreen filed an answer and counterclaims in which the Court should consider in their ability to have this matter heard on its merits. By filing an Answer along with the Motion to Set Aside, Defendants

have duly corrected their neglect, albeit excusable, and should be allowed the opportunity to properly defend their positions.

Respectfully submitted, this the 10th day of September, 2018.

/s/ David E. Dean

David E. Dean

Heritage Law Firm

615 S. College St; 9th Floor

Charlotte, North Carolina 28202

Phone: 704-233-3550

Fax: 704-234-6598

Email: David.Dean@Heritage-Legal.com

North Carolina State Bar No. 50091

Attorney for Morgreen Solar Solutions, LLC
and Darin Green

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2018, I electronically filed the foregoing Memorandum in Support of Defendants Motion to Set Aside Entry of Default with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following:

Gilda A. Hernandez
Emma J. Smiley
The Law Office of Gilda A. Hernandez, PLLC
1020 Southhill Drive, Ste. 130
Cary, NC 27512
ghernandez@gildahernandezlaw.com
mcohen@gildahernandezlaw.com

Kerry A. Shad
Patrick D. Lawler
Smith, Anderson, Blount, Dorsett,
Mitchell & Jernigan, LLP
PO Box 2611
Raleigh, NC 27602
Kshad@smithlaw.com
plawler@smithlaw.com

/s/ David E. Dean

David E. Dean

Heritage Law Firm

615 S. College St; 9th Floor

Charlotte, North Carolina 28202

Phone: 704-233-3550

Fax: 704-234-6598

Email: David.Dean@Heritage-Legal.com

North Carolina State Bar No. 50091

Attorney for Morgreen Solar Solutions, LLC
and Darin Green